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Numark Security, Inc. and International Guards Union of America. Cases 9-CA-37419, 9-CA-37557, 9-CA-37566, 9-CA-37641, 9-CA-37714, 9-CA-37800, 9-CA-38070, 9-CA-38250, 9-CA-38314, and 9-CA-38354

January 29, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH
AND ACOSTA

The General Counsel seeks summary judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On August 7, 2001, the Board issued an Order¹ that, among other things, directed the Respondent to make whole Ernie Dunn for any loss of earnings and other benefits resulting from the Respondent's discharge of him in violation of the Act. On December 4, 2001, the United States Court of Appeals for the Seventh Circuit issued an unpublished judgment enforcing the Board's Order.²

A controversy having arisen over the amount of backpay due Dunn, on September 16, 2002, the Regional Director issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

On October 24, 2002, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On October 25, 2002, the Board issued an order transferring the proceeding to the Board and a No-

tice to Show Cause why the motion should not be granted.³ The Respondent did not file a response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In addition, by letter dated October 9, 2002, counsel for the General Counsel advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by October 17, 2002, a Motion for Summary Judgment would be filed. The Respondent did not respond to this letter. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due Ernie Dunn is as stated in the compliance specification and we will order payment by the Respondent of that amount to Dunn, plus interest accrued to the date of payment.

¹ Unpublished Order adopting, in the absence of exceptions, the decision of Administrative Law Judge Arthur J. Amchan issued on June 22, 2001.

² 01-3605.

³ On October 28, 2002, the Board issued an Order Correcting the Notice to Show Cause.

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

ORDER

The National Labor Relations Board orders that the Respondent, Numark Security, Inc., Gary, Indiana, its officers, agents, successors, and assigns, shall make whole Ernie Dunn by paying him the amount following his name, plus interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws:

Ernie Dunn \$27,054

Dated, Washington, D.C., January 29, 2003

Robert J. Battista, Chairman

Dennis P. Walsh, Member

R. Alexander Acosta, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD